

Message Text

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ACTION EB-08

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00
DODE-00 DOTE-00 INR-10 NSAE-00 FAA-00 L-03 SSO-00
NSCE-00 INRE-00 SS-15 SP-02 PA-01 ICAE-00 ITC-01
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O 071506Z SEP 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 1673
AMEMBASSY LONDON IMMEDIATE
AMEMBASSY PARIS IMMEDIATE

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E.O. 11652: N/A
TAGS: EAIR, GW
SUBJECT: CIVAIR: US-FRG CIVIL AVIATION NEGOTIATIONS:
FRG POSITION

REF: STATE 219915

1. PARAGRAPH 6 BELOW CONTAINS TEXT OF GERMANY DRAFT
OF ARTICLE 11 RE TARIFFS IN RESPONSE TO U.S. PROPOSAL
CONTAINED IN REFTEL.

2. IN HANDING OVER TEXT TO EMBASSY OFFICER,
STUKENBERG SAID THAT GERMAN COUNTER TEXT IS BASED ON
ASSUMPTION THAT IATA RATE - FIXING PROCEDURE WILL BE
USED WHEN POSSIBLE; IF IATA PROCEDURES FAIL,
WE SHOULD OPEN THE POSSIBILITY OF INTERCARRIER
NEGOTIATIONS (IN ACCORDANCE WITH BERMUDA 2); IF
NEITHER OF THESE PROCEDURES SUCCEED, EACH STATE
CAN REQUIRE THE FILING OF TARIFFS; IF THERE IS
STILL NO AGREEMENT, EITHER STATE CAN ASK FOR
CONSULTATIONS WITH A VIEW TO REACHING A COMMON
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UNDERSTANDING; FINALLY, IF ALL ELSE FAILS, THE
COUNTRY OF ORIGIN RULES SHOULD APPLY.

3. ON COMMENTING ON THE PREAMBLE, STUKENBERG
SAID THE U.S. TEXT SEEMED TO GO BEYOND THE
COMPETENCE OF FRG AVIATION AUTHORITIES. THE FRG
COUNTER TEXT IS BASED ON LANGUAGE IN BERMUDA 2

AND THE OLD U.S. - FRG AGREEMENT AND IS INTENDED TO LIST THE BASIC PRINCIPLES WHICH THE FRG BELIEVES SHOULD BE TAKEN INTO CONSIDERATION IN SETTING TARIFFS.

4. STUKENBERG CALLED ATTENTION TO THE TIME PERIODS LISTED IN SUBPARAGRAPH FIVE AND STATED THAT THEY WERE TAKEN FROM THE BERMUDA 2 AGREEMENT, BUT WERE SUBJECT TO FURTHER NEGOTIATIONS.

5. STUKENBERG EMPHASIZED THAT THE GERMAN COUNTER DRAFT IS INTENDED TO DEMONSTRATE FLEXIBILITY AND IS TO BE CONSIDERED AS PART OF A PACKAGE TO BE NEGOTIATED ON THE BASIS OF AN ADEQUATE QUID PRO QUO.

6. FOLLOWING IS PROPOSED GERMAN TEXT. QUOTE:

ARTICLE 11
TARIFFS

(1) TARIFFS OF THE DESIGNATED AIRLINES OF THE CONTRACTING PARTIES FOR CARRIAGE BETWEEN THEIR TERRITORIES SHALL BE ESTABLISHED IN ACCORDANCE WITH THE PROCEDURES SET OUT IN THIS ARTICLE.

(2) THE TARIFFS TO BE CHARGED BY THE DESIGNATED AIRLINES ON THE ROUTES PROVIDED FOR IN LIMITED OFFICIAL USE

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ACCORDANCE WITH PARAGRAPH (2) OF ARTICLE 2 OF THIS AGREEMENT SHALL BE REASONABLE, DUE REGARD BEING PAID TO ALL RELEVANT FACTORS, SUCH AS

HIGH STANDARD OF SAFETY,
COST OF OPERATION ASSUMING REASONABLE LOAD FACTORS,
REASONABLE PROFIT,
NEED TO MEET COMPETITION FROM SCHEDULED OR CHARTER,
AIR SERVICES WHOLLY OR PARTLY OFFERED ON THE SAME ROUTES,
TAKING INTO ACCOUNT DIFFERENCES IN COST AND QUALITY OF SERVICE
AND PREVENTION OF UNJUST DISCRIMINATION AND UNDUE PREFERENCES OR ADVANTAGES
AS WELL AS THE REASONABLE INTERESTS OF USERS OF THE AIR TRANSPORT SERVICES.

(3) THE TARIFFS TO BE CHARGED BY THE DESIGNATED AIRLINES OF EITHER CONTRACTING PARTY BETWEEN THE

TERRITORIES OF THE CONTRACTING PARTIES SHALL,

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CONSISTENT WITH THE PROVISIONS OF THIS AGREEMENT, BE
SUBJECT TO THE APPROVAL OF THE AERONAUTICAL
AUTHORITIES OF THE CONTRACTING PARTIES, WHO SHALL
ACT IN ACCORDANCE WITH THEIR OBLIGATIONS UNDER THIS
AGREEMENT, WITHIN THE LIMITS OF THEIR LEGAL POWERS.

(4) DURING ANY PERIOD FOR WHICH EITHER CONTRACTING
PARTY HAS APPROVED THE TRAFFIC CONFERENCE PROCEDURES
OF THE INTERNATIONAL AIR TRANSPORT ASSOCIATION OR
OTHER ASSOCIATION OF INTERNATIONAL AIRLINES ANY RATE
AGREEMENTS CONCLUDED THROUGH THESE PROCEDURES OR AS
A RESULT OF OTHER INTERCARRIER DISCUSSIONS AND
INVOLVING AN AIRLINE OR AIRLINES OF THE CONTRACTING
PARTIES WILL BE SUBJECT TO THE APPROVAL OF THE
AERONAUTICAL AUTHORITIES OF THOSE CONTRACTING PARTIES.

(5) INTERCARRIER AGREEMENTS ACCORDING TO PARAGRAPH (4)
SHALL BE SUBMITTED TO THE AERONAUTICAL AUTHORITIES
OF BOTH CONTRACTING PARTIES AT LEAST ONE HUNDRED FIVE
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(105) DAYS BEFORE THE PROPOSED DATE OF EFFECTIVENESS, ACCOMPANIED BY SUCH JUSTIFICATION AS EACH CONTRACTING PARTY MAY REQUIRE OF ITS OWN AIRLINES. THE PERIOD OF 105 DAYS MAY BE REDUCED WITH THE CONSENT OF THE AERONAUTICAL AUTHORITIES OF THE CONTRACTING PARTY WITH WHOM A FILING IS MADE. THE AERONAUTICAL AUTHORITIES OF EACH CONTRACTING PARTY SHALL USE THEIR BEST EFFORTS TO DECIDE ON THE APPROVAL OF EACH AGREEMENT SUBMITTED IN ACCORDANCE WITH THIS PARAGRAPH ON OR BEFORE THE SIXTIETH (60TH) DAY AFTER ITS RECEIPT. EACH CONTRACTING PARTY MAY REQUIRE THAT TARIFFS REFLECTING AGREEMENTS APPROVED BY IT BE FILED AND PUBLISHED IN ACCORDANCE WITH ITS LAWS.

(6) ANY TARIFF PROPOSED BY AN AIRLINE OF EITHER CONTRACTING PARTY FOR SCHEDULED SERVICE BETWEEN THE TERRITORIES OF THE CONTRACTING PARTIES AND NOT COVERED BY AN INTERCARRIER AGREEMENT APPROVED BY THE AERONAUTICAL AUTHORITIES OF BOTH CONTRACTING PARTIES ACCORDING TO PARAGRAPH (5) SHALL, IF SO REQUIRED, BE FILED WITH THE AERONAUTICAL AUTHORITIES OF THE OTHER CONTRACTING PARTY AT LEAST SEVENTY FIVE (75) DAYS PRIOR TO THE PROPOSED DATE OF INTRODUCTION UNLESS THE CONTRACTING PARTY WITH WHOM THE FILING IS TO BE MADE PERMITS FILING ON SHORTER NOTICE. SUCH TARIFF SHALL BECOME EFFECTIVE UNLESS ACTION IS TAKEN AS PROVIDED IN PARAGRAPH (8) OF THIS ARTICLE.

(7) IF THE AERONAUTICAL AUTHORITIES OF ONE CONTRACTING PARTY ON RECEIPT OF THE NOTIFICATION REFERRED TO IN PARAGRAPH (6) OF THIS ARTICLE IS DISSATISFIED WITH THE TARIFF PROPOSED IT SHALL SO NOTIFY THE OTHER CONTRACTING PARTY AT LEAST FIFTEEN (15) DAYS PRIOR

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TO THE PROPOSED EFFECTIVE DATE OF SUCH TARIFF. THE CONTRACTING PARTY RECEIVING THE NOTIFICATION MAY REQUEST CONSULTATIONS AND IF SO REQUESTED, SUCH CONSULTATIONS SHALL BE HELD AT THE EARLIEST POSSIBLE DATE FOR THE PURPOSE OF ATTEMPTING TO REACH AGREEMENT ON THE APPROPRIATE TARIFF. IF NOTIFICATION OF DISSATISFACTION IS NOT GIVEN AS PROVIDED IN THIS PARAGRAPH, THE TARIFF SHALL BE DEEMED TO BE APPROVED BY THE AERONAUTICAL AUTHORITIES OF THE CONTRACTING PARTY RECEIVING THE FILING AND SHALL BECOME EFFECTIVE AT THE PROPOSED DATE.

(8) IN THE EVENT THAT AGREEMENT IS REACHED ON THE APPROPRIATE TARIFF UNDER PARAGRAPH (7) OF THIS ARTICLE, EACH CONTRACTING PARTY WILL EXERCISE ITS BEST EFFORTS TO PUT SUCH TARIFF INTO EFFECT. IF AN AGREEMENT IS NOT REACHED PRIOR TO THE PROPOSED EFFECTIVE DATE OF THE TARIFF, OR IF CONSULTATIONS ARE NOT REQUESTED, NEITHER CONTRACTING PARTY SHALL PREVENT THE INSTITUTION OR CONTINUATION OF ANY FARE OR RATE WHICH IS PROPOSED OR OFFERED BY A DESIGNATED AIRLINE OF THE OTHER CONTRACTING PARTY, EXCEPT WHERE THE FIRST POINT ON THE ITINERARY (AS EVIDENCED BY THE DOCUMENT AUTHORIZING TRANSPORTATION BY AIR) IS IN THE TERRITORY OF THE FIRST CONTRACTING PARTY, UNLESS OTHERWISE AGREED BY THE CONTRACTING PARTIES. HOWEVER, EACH CONTRACTING PARTY SHALL PERMIT ANY DESIGNATED AIRLINE OF THE OTHER CONTRACTING PARTY TO INSTITUTE OR CONTINUE A FARE OR RATE WHICH MATCHES, OR PROVIDES FOR A SUBSTANTIALLY SIMILAR FARE, RATE OR PRICE AND FOR SUBSTANTIALLY SIMILAR TERMS AND

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CONDITIONS AS, ANY FARE OR RATE WHICH IS APPROVED OR PERMITTED FOR ITS OWN AIRLINE OR AIRLINES. IN NO CIRCUMSTANCES, HOWEVER, SHALL A CONTRACTING PARTY

REQUIRE A DIFFERENT TARIFF OF ITS OWN DESIGNATED
AIRLINES FOR COMPARABLE SERVICE BETWEEN THE SAME
POINTS.

(9) THE TARIFFS TO BE CHARGED BY THE DESIGNATED
AIRLINES OF ONE CONTRACTING PARTY BETWEEN THE TERRITORY
OF THE OTHER CONTRACTING PARTY AND THE TERRITORY OF A
THIRD STATE SHALL BE SUBJECT TO THE APPROVAL OF THE
OTHER CONTRACTING PARTY AND SUCH THIRD STATE.

(10) THE AERONAUTICAL AUTHORITIES OF EACH CONTRACTING
PARTY SHALL USE THEIR BEST EFFORTS TO ENSURE THAT THE
DESIGNATED AIRLINES CONFORM TO THE AGREED TARIFFS
FILED WITH THE AERONAUTICAL AUTHORITIES OF THE
CONTRACTING PARTIES, AND THAT NO AIRLINE REBATES ANY
PORTION OF SUCH TARIFFS BY ANY MEANS, DIRECTLY OR
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